JUSTICE Vindicated;

OR, AN

EXPLANATION

OF AN

ACT of PARLIAMENT,

ENTITL'D,

An Act for granting an Aid to his Majeſty, by a Land Tax, &c.

Wherein is ſhewn,

What Power and Authority Commiſſioners and Aſſeſſors have, and how they ought to demean themſelves. What Evidence is legally required to repute a Man a Papiſt. What Perſons are to be aſſeſs'd towards raiſing the Aid ſingly, and what doubly; and in what Manner it ought to be aſſeſs'd, levied, and collected.

In a LETTER to a NOBLEMAN.

By a Perſon, who, for many Years hath made the Study of the Laws of *England*, his only Profeſſion.

Lex tum Laudatur quando Ratione probatur. Co. 1ſt. Inſtit.

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BRITISH MUSEUM

AN EXPLANATION OF AN ACT of PARLIAMENT,

MADE

In the Eleventh Year of the Reign

OF

King *GEORGE*,

ENTITL'D,

An Act for granting an Aid to his Majeſty, by a Land Tax, *&c.*

My good LORD,

WHEN You was pleas'd to do me the laſt Honour of a Viſit, You, like a true and ſincere Chriſtian, freely own'd your ſelf to

be an *Engliſh* Catholick; and at the ſame Time declar'd, You look'd upon Government to be ſacred, and then gave for Reaſon thereof, becauſe without it, Men were, as in a Wilderneſs, ſubject to the voracious Humours of one another; and that therefore You thought your ſelf oblig'd in Conſcience to be actively or paſſively obedient to whatever Government God permitted to come over you; and that you would willingly take the new Oaths eſtabliſhed inſtead of the Oaths of Allegiance and Supremacy, ſo far as they were promiſory, it being, as you then ſaid, in your Power to perform what you promiſe; but that you refuſed only that Part of them which is aſſertitory, becauſe as you then likewiſe alledg'd, aſ-

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ſerting a Thing upon Oath, that one doth not certainly know to be true, altho' it ſhould prove to be ſo, is (by the Conſent of all Divines) Perjury, and plainly forbid by God's Commandment; and from thence you taking an Occaſion to complain of Perſecution againſt you and other Catholicks, barely for exerciſing your Religion, and believing thoſe Doctrines of the Catholick Church, which in themſelves could not be more offenſive, or turn to the Detriment of the Government, than thoſe of the *Jews*, who deny the whole Chriſtian Religion; *Mahometans*, who ſet up a falſe Prophet in Oppoſition to our Saviour; *Socinians*, who deny the Trinity; *Quakers*, who deny the two Chriſtian Sacraments, Bap-

tiſm and the Lord's Supper; *Independents*, who deny Monarchy and Epiſcopacy to be by divine Right; and many others, who maintain many monſtrous Doctrines in Oppoſition to the Doctrines of the preſent Eſtabliſh'd Church of *England*; who, as your Lordſhip was then pleas'd to obſerve, are tollerated and encouraged; I ſay, my good Lord, ſince you was pleas'd in that Diſcourſe, in that manner, to complain againſt the Laws in general made again Papiſts and reputed Papiſts, and more eſpecially againſt the Land Tax Act, as if it had put it in the Power of Commiſſioners and Aſſeſſors to tyrannize over their Catholick fellow Subjects, by enabling them firſt, to repute whom they pleaſe to be Papiſts,

and

and then to tax them and their Eſtates double, that they and their Tenants, as you then alſo ſaid, might be eaſed; and by Conſequence, as you was pleaſed then likewiſe to affirm, that they might extort Money from the Catholicks, and put it into their own Pockets. Wherefore, that I might give your Lordſhip a right Notion of the Laws of *England*, and of his preſent Majeſty King *George* and the preſent Government, I have, after due Conſideration of your propoſed Caſe, complied with your Requeſt; the rather, becauſe I do not know, That ever the Clauſes of that Act came under the Judgment of the Learned and Reverend Judges in *Weſtminſter-Hall*, and to whoſe Determinations I ſhall readily ſubmit

mit whenever their Opinions are known.

And, my Lord, I ingenuouſly confeſs, if I had not been fully perſwaded, That that Law had fully prevented both peeviſh and malicious Commiſſioners from gratifying their Malice and Revenge, and ſelf-intereſted and avaricious Commiſſioners from ſeeking their private Intereſt; and that what I am about to ſay tended to the Honour and Benefit of his Majeſty and the Parliament, as well as to your Lordſhip's Satisfaction, notwithſtanding the great Reſpect I have for your Lordſhip, and the many Obligations your Lordſhip hath laid on me, Caution would have tempted me, to have deſir'd you

you to make Choice of ſome more eminent Lawyer to have reſolv'd your Queries; but I am of Opinion, That that Act is ſo plain, that ſuch Caution is needleſs.

I readily agree to what your Lordſhip affirmed, concerning Aſſertitory Oaths; and that they ought not to be impoſed for the Reaſons you then gave, unleſs Neceſſity requires, and Neceſſity, your Lordſhip knows, hath no Law. The Laws of *England* have always diſtinguiſh'd between Papiſts and Catholicks, for when the Catholick Religion was the publickly profeſt Religion of the Nation. The Parliament in the 16th Year of *Richard* II. Chap. V. in the Preamble of that Statute, complain'd grievouſly

grievouſly againſt the Biſhops of *Rome*, for ſome Encroachments in Point of Diſcipline, and thereupon declared, That the Crown of *England* at all Times, had been ſo free, That it had been in no earthly Subjection, but immediately ſubject to God in all Things touching the Regalia; and that the ſame would be ſubject to the Pope; and the Laws and Statutes of the Realm would be by him defeated in perpetual Deſtruction of the Soveregnty of the King, his Crown and Dignity, and of all his Realm, if ſuch Things were permitted, which God forbid, ſaith that Statute: And yet in ſome Statutes and adjudg'd Caſes, the Biſhop of *Rome* was in thoſe Times called the great Apoſtle in Spiritual Matters; and

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it is very well known, there is no Catholick Prince in *Europe*, that will, at this Time, ſuffer the Pope to interfere with their Prerogative; and, ſince the Reformation of Religion in *England*, Queen *Elizabeth*, in whoſe Reign *Papiſts* were ſeverely enough dealt with, in the Beginning of her Reign, publiſh'd an Injunction, declaring, ſhe claim'd nö other Authority than what was, of ancient Time, due to the Imperial Crown of *England*, that is, under God, to have Sovereignty and Rule over all Manner of Perſons born within theſe Realms, of what Eſtate, either Eccleſiaſtical or Temporal, ſoever they be, ſo as no other foreign Power, ſhould, or ought, to have any Power over them: And the Act of Parliament

made in the Fifth Year of her Reign, entituled, Aſſurance of the Queen's Power over all Eſtates, confirm'd the ſame in theſe Words, Provided, and that the Oaths expreſs'd in the Act, made in the Firſt Year of the ſaid Queen's Reign, ſhall be taken and expounded in ſuch Form, as is ſet forth in an Admonition annex'd to the Queen's Majeſties Injunctions publiſh'd in the Firſt Year of her Reign, that is, to confeſs and acknowledge in her Majeſty, her Heirs and Succeſſors, none other Authority, than what was challeng'd by King *Henry* VIII. and King *Edward* VI. as in the ſaid Admonition may more plainly appear, ſaith that Statute; and other Laws have ſufficiently (ſince the Biſhop of *Rome* took upon

upon him to excommunicate her) defin'd a Papiſt to be a Perſon, who withdraws his Obedience and Allegiance from the Government he lives under, and pays it to the Pope; and yet his Majeſty King *George*, by a late Law, entituled an Act for granting an Aid to his Majeſty, by laying a Tax upon Papiſts, *&c.* hath acknowledg'd, That Catholicks may be good and loyal Subjects; for by it, it is declar'd, That *Richard Pendrel* of *Boſcobel*, in the County of *Salop*, Gent. and ſeveral others in the Act mention'd (all known to be profeſs'd Catholicks) were good and faithful Subjects in theſe Words; Provided, and it is hereby declar'd, That this Act, or any Thing therein contain'd, ſhall not extend to charge the

Lands, or real or perſonal Eſtates, *&c.* of *Richard Pendrel*, *&c.* (and divers others in the Act nam'd) but that the ſeveral Perſons before-mentioned, and their Eſtates, ſhall be free and clear from the Tax or Aſſeſſment impoſed by this Act, in Regard to the Fidelity and eminent Services of their Anceſtors (who were alſo known Catholicks) in the Preſervation of his late Majeſty King *Charles* II. and their own conſtant, loyal and dutiful Behaviour to his preſent Majeſty. And if honeſt Jurymen and others, would obſerve and keep to this legal Diſtinction, as in Law and Conſcience they ought to do, (for every Perſon ought to be ſuppoſed innocent, until the Contrary appears) Catholicks, as ſuch, would

have

have as little Reaſon to complain of Perſecution for their Religion, as all the different Diſſenters from the eſtabliſh'd Church of *England* (your Lordſhip mention'd) have: And, I think it cannot be denied, That there is no Doctrine, that the *Engliſh* Catholicks, as Catholicks, hold, but hath been maintain'd by ſome eminent reform'd Divines of the Church of *England*; but I muſt then add, That the Doctrine of paying their Allegiance to the Pope, is the peculiar Doctrine of the Papiſts; and Catholicks are no more perſecuted by the Laws for thoſe Doctrines they hold, barely as Catholicks, than the different Sects your Lordſhip mentioned, are for their monſtrous heterodox Opinions; for I never read, That the Proof of a Catholick's

tholick's Belief of Tranſubſtantiation, Purgatory, Auricular Confeſſion, Invocation of Saints, *&c.* was ever cenſured in any Spiritual or Eccleſiaſtical Court, or allow'd upon ſolemn Argument, by the learned Judges in *Weſtminſter* Hall, to be a ſufficient Evidence to prove a Man a Papiſt; and, I believe, never will; for, that would be barefac'd Perſecution for Conſcience Sake, which I believe his Majeſty and the Parliament abominate. It was Neceſſity therefore, that compell'd the Government to make uſe of that aſſertitory Oath, and of the Terms *Reputed Papiſts*; altho' they well knew no Man's Reputation is in his own Power; and knew alſo, That although all Catholicks were not Papiſts, yet all Papiſts were

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Catholicks, and that therefore all Catholicks were not of the ſame Temper, by the Conſpiracies ſome of them were accuſed of, during the Reign of Queen *Elizabeth*; and that all thoſe Catholicks, who reſide in the Dominions of the Pope, do actually pay Obedience to the Pope, in Temporal, as well as Spiritual Matters; and not knowing but ſome in *England* might be of the ſame Perſuaſion, and reflecting upon the Difficulty there was of legally proving a Man to be a Papiſt, unleſs he was firſt proved actually guilty of betraying the State; They, to prevent thoſe Dangers, thought it beſt, where Catholicks are ſo numerous, as in *Great-Britain*, to diſcover the Papiſts, before the Danger happened, by

by that previous aſſertitory Oath, eſteeming the refuſing to take that Oath, as in Truth it is, a ſufficient Ground to repute a Man a Papiſt on: And if it be true, That Papiſts will take any Oath for the Good of Mother-Church (as it is frequently ſaid) I think it effectually proves your Lordſhip is no Papiſt, by refuſing that Oath, becauſe it is aſſertitory, and yet profeſſing your ſelf to be a Catholick; And to ſhew your Lordſhip, That you have little little Reaſon to apprehend Perſecution for your Religion, or Belief of thoſe innocent (in Reſpect of the State) and uncenſured Doctrines, as an *Engliſh* Catholick; your Lordſhip hath had the Comfort to ſee King *George*, who, by God's Permiſſion, is now in full Poſſeſſion of the

the Throne of *Great-Britain*, is become the principal Advocate for (that Right of all Mankind) Liberty of Conſcience Abroad, and hath hitherto ſhewn himſelf to be a moſt gracious Prince, by not permitting, or encouraging, thoſe ſanguinary Laws to be put in Execution, that were made (in ſome of his Predeceſſors Times) againſt ſome Papiſts themſelves; and there is no Room for your Lordſhip to fear, he will ſuffer thoſe Laws to be put in Execution againſt Catholicks, as ſuch, That do not, as Rebels, forfeit their Claim to the Protection of the Government, due to them as lawful Subjects: And I doubt not, by what follows, to ſatisfy your Lordſhip, That thoſe neceſſary Expedients, the aſſertitory Oath

and Terms, reputed Papiſts, can never turn to thoſe Conſequences You imagine in the Land Tax, if your Lordſhip and the Catholicks would be content to place your Lands in juring Proteſtants Hands, and live upon your Rents; it is already agreed, on all Hands, that if your Lordſhip and the Catholicks, part with their Lands, they cannot be rated for thoſe Lands; and I can ſee no Difference, between thoſe, who part with their Lands, for a Rent-Charge, or a Rent-Service; and thoſe who part with them for a Sum in Groſs; in either Caſe, the Takers are, *bona fide*, Purchaſors, and thoſe, who part with them, are only Proprietors of the Rent, and not of the Land; 'tis true, thoſe who reſerve Rent-Service out of thoſe

thoſe Lands they part with, have an Intereſt in Reverſion; but can in no Senſe be ſaid to have the Land, till that Reverſion happens to come in Poſſeſſion, and can bring no Actions of Treſpaſs, for any Treſspaſſes committed on the Land, they being done only to the Damage of the Proprietors of the Land, and to ſuch Actions, even thoſe Perſons, who have Rents out of the Land, have been often ſubject.

Your Lordſhip cannot refuſe to grant, That (ſuppoſing Catholicks to be ſo dangerous to the Government, as the Law ſuppoſeth Papiſts to be) it is but common Prudence in the Government, not to ſuffer them to have the Command

of ſo many Horſes, Waggons, Carts and Carriages, as Farmers muſt neceſſarily have, for the manuring, plowing, ſowing their Ground, and inning of their Crop, and that being granted, will very much help to the Underſtanding of the Land Tax; but before I proceed to the Examination of the ſeveral Clauſes of that Act, I beſeech you to obſerve one of the great Objections, made againſt Monopolies, is, That it puts it in the Power of Subjects for their own private Intereſt, Lucre and Advantage, to oppreſs their fellow Subjects by exacting greater Prices of Things monopoliz'd, for their own Advantage, *Co. Lib.* 2. *fo.* 86. And can it be then imagin'd, That the Parliament would put it in the Power of

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Aſſeſſors and Commiſſioners, to ingroſs, and, as I may ſay, monopolize the Fines, Pains and Penalties, given by the Act to his Majeſty, over and above the Aid granted, to their own Benefit? Surely no. It is more than probable, if the double Taxes granted to his Majeſty, were to be applied towards raiſing the Sum granted for the Aid, the Aſſeſſors and Commiſſioners of thoſe Diviſions, where ſuch double Taxes are to be paid, would careſs and favour ſuch reputed Papiſts and Nonjurors, and connive at their other Faults, Offences and Miſdemeanors, againſt the Publick, and ſcreen them from other Pains and Penalties they might be liable to, ſo long as they help'd to pay their Taxes for them,

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rather than (by being careful of the Government) force them to part with their Lands, into ſuch Hands, as muſt be but equally taxed with themſelves.

But not to tire your Lordſhip with longer Preambles, I will conſider your Lordſhip's Caſe, after having ſhewn you with what Juſtice and Exactneſs, the learned Judges and Serjeants of the Law, have always expounded Acts of Parliament. In Sir *William Herbert*'s Caſe, *Co. Lib.* 3. *fo.* 13. it is ſaid, General Statutes muſt always be expounded according to the Rules of the Common Law, which are founded on the Perfection of Reaſon, and not according to any private and ſudden Conceit, or Opinion.

Opinion: In *Rooke*'s Caſe, *Co. lib.* 5. *fo.* 100. It is ſaid, That notwithſtanding Commiſſioners of Sewers by their Commiſſion are authoriz'd to act according to their Diſcretion, yet their Proceedings ought to be limited and bound by the Rules of Law and Reaſon; and That Diſcretion is a Knowledge and Underſtanding to diſcern between Truth and Falſhood, between Equity and colourable Gloſſes and Pretences, and not to act according to their Wills and private Affections, *Ipſe etenim leges cupiunt ut jure regantur. Co. lib.* 10. *fo.* 138. The Rule is, always ſuch Conſtruction ought to be made of Acts of Parliament, That one Part of the Act may agree with the other, That ſo the whole may ſtand

ſtand together. In *Plowden's Com. fol.* 863. It is laid down for a Rule, That whatever Act gives more Penalty, than was before at common Law, is a Penal Law, and ought to be expounded in the moſt favourable and beneficial Manner, that the Words will bear. A°. 1. *Ed.* VI. *cap.* 12. the Benefit of Clergy was taken away from thoſe, who ſhould be convicted for ſtealing of Horſes; and although the Crime was an odious Crime, and very detrimental to the Publick, and although the Plural Number, comprehends the Singular, yet it being a Penal Law, the Parliament, in the Second and Third Years of that King, *Cap.* 33. Enacted, That thoſe, who ſhould ſteal one Horſe, ſhould loſe the Benefit of Clergy.

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The Statute of 16 and 17 of King *Charles* II. appointed Commiſſioners to determine Differences, ariſing concerning the Fenns; and Enacted, That the Determination of 7 of them, ſhould be Final and Concluſive to all Parties; and yet in the Caſe of *Bull* and *Partridge*, *Syderfin*, *fo.* 296, it was declar'd for Law, That if the Commiſſioners do not proceed according to the Statute, all is void, and *Coram non judice*, and the Parties are at large to examine the ſame. In an Action brought at common Law, and in *Lane*'s Reports, *fo.* 90. in the Caſe of *Gibons*, it was adjudg'd in the Exchequer, That if a Man exceeds his Authority in Point of Law, he ſhall be puniſh'd in an Action of Treſpaſs, as a Treſpaſſer

ab initio; and if he abuſes his Authority, an Action on the Caſe will lie againſt him. I could ſhew your Lordſhip other Caſes, where to come at Juſtice and Equity, the the Judges have expounded Acts of Parliament contrary to the Words of them, if I did not fear being too prolix.

Your Lordſhip's Caſe as ſtated, is; your Lordſhip reſides in the County of *Kent*, and have there ſome Lands in your own Poſſeſſion, and other Lands in the Hands of Under-Tenants, and have other Lands in the County of *Northumberland*, all in the Hands of Under-Tenants, and have a Rent-Charge iſſuing out of Lands in *Warwickſhire*; and your Son an Infant,

ſant, hath an Eſtate in Lands, who, at the Age of 18, went beyond the Seas to Travel for his Improvement, who was always aſſeſs'd ſingly for thoſe his Lands, until the laſt Year; and that your Lordſhip is aſſeſs'd double for all your Lands in *Kent*, as well thoſe in your own Poſſeſſion, as for thoſe in your Tenants Hands; and double for your Lands in your Tenants Hands in *Northumberland*, and double for your Rent-Charge in *Warwickſhire*; and your Son, altho' ſtill beyond the Seas, is aſſeſs'd double for his Lands, by the reſpective Commiſſioners, where your, and your Son's Lands reſpectively lie; and that ſome of the Commiſſioners, who ſign'd thoſe Aſſeſsments, have conſiderable Eſtates within the ſame

Diviſions; and, That you appealed againſt your being rated double for your Rents in your Tenants Hands, and your Rent-Charge, to the reſpective Commiſſioners where they were rated, and againſt your Son's being rated double, and was refus'd Relief.

For the better Underſtanding of which, the ſeveral Clauſes of the Act are to be duly conſider'd; And the Act, fo. the 4th. grants to his Majeſty, the Sum of Nine Hundred Ninety Five Thouſand Two Hundred Twenty Five Pouns, Twelve Shillings and Four Pence, to be raiſed in *England*, within the Year 1725, to be aſſeſs'd upon the ſeveral Counties, *&c.* according to the Proportions in the

the Act mention'd; and further Enacts, That the Commiſſioners, who are to put the Act in Execution, ſhall ſubdivide thoſe Proportions upon every Diviſion: And, *ſo.* 2. Enacts, That towards raiſing the ſeveral and reſpective Sums, charged on the reſpective Counties, *&c.* All Perſons, *Having* any Perſonal Eſtate (Except, as in the Act Excepted) Offices, Annuities, not iſſuing out of Land, *&c.* ſhall pay Two Shillings in the Pound; and to make up the full Sum by the Act charged upon the ſeveral Counties; *ſo.* the 13th. It is further Enacted, That all Manors, Meſſuages, Lands, and Tenements, *&c.* And the Perſon, or Perſons, *Having* or *Holding* them, ſhall be charg'd with as much

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Equality and *Indifference*, as is poſſible, by a Pound Rate, for, or towards the reſpective Sums, ſet, or impoſed upon every ſuch Counties, by the Act charg'd therewith, as aforeſaid. And the Word *Equality* ſurely excludes double Taxes from being laid upon the Lands, or any Perſon in Reſpect thereof, towards the Sum granted for the Aid. For a double and ſimple Pound Rate, can no more be underſtood to be an equal Pound Rate, than one and two can be ſaid to be equal Numbers; and the Word *Indifference* can mean no leſs, than without making any Difference between Party and Party, whither Peer or Commoner, Juror, or Nonjuror, Papiſt, or Proteſtant; and further, to explain their Meaning, the Par-

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liament added the remarkable Words following: So that by the ſaid Rates *So to be* taxed, for, or upon ready Money, Debts, &c. And for and upon Manors, Meſſuages, Lands, &c. according to the Purport and true Meaning of this preſent Act, the full and entire Sums hereby appointed to be raiſed as aforeſaid, ſhall be compleatly and effectually taxed, aſſeſſed, levied, and collected, &c. By all which Words, I think it is as plain as Words can make it, That the Law-Makers intended (the common Notion of Juſtice and Reaſon) That all Subjects, without Diſtinction, ſhould, according to their Abilities, equally contribute towards the Support of the Government; And accordingly, the Act, *fol:* the 16th.

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requires the Commiſſioners within every Diviſion, to cauſe the ſeveral Proportions, charged on the reſpective Diviſions, towards the Aid granted, to be equally aſſeſs'd and taxed within every Diviſion: And, *fol.* the 17th, The Aſſeſſors are ſtrictly enjoyn'd, with all Care and Diligence, to aſſeſs the full Sum given them in Charge, upon Perſonal Eſtates, Lands, Tenements, *&c.* chargeable as aforeſaid, according to the Act, and by an equal Pound Rate, upon all Manors, *&c.* within the Bounds of the Places for which they ſhould be appointed Aſſeſſors; and, *fol.* the 18th, The Commiſſioners are required to deliver a Schedule, or Duplicate, containing the whole Sum aſſeſs'd upon each Place, to the Receiver-Gene-

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ral of each County, &c. reſpectively; and, to tranſmit into the King's Remembrancers Office of the Exchequer, a like Schedule, or Duplicate; and *fol.* the 23d, the Act provides, That if any Perſon find himſelf aggriev'd, in that the ſaid Aſſeſſors have over-rated him, and, (after Demand of the Sum ſo aſſeſs'd on him) ſhall appeal to three or more of the ſaid Commiſſioners; the Commiſſioners, or any three or more of them, have Power and are authoriz'd to relieve ſuch Perſon, and to charge the ſame upon ſuch other Perſon or Perſons, as they ſhall ſee Cauſe; and, in Caſe the Proportions ſet by the Act, upon the reſpective Diviſions, ſhall not be fully aſſeſs'd, according to the true Meaning of

the Act, through any Wilfulneſs, Negligence, *Miſtake*, or other Accident, the ſaid Aſſeſſment, charg'd upon ſuch Place, as aforeſaid, ſhall happen not to be paid, as in the Act is directed, in all ſuch Caſes; the ſaid Commiſſioners, Aſſeſſors, *&c.* are requir'd, and authoriz'd, to aſſeſs and re-aſſeſs ſuch Sums upon the reſpective Diviſions, wherein ſuch Deficiency ſhall happen, as to the ſaid Commiſſioners, or ſuch Number of them, as by the Act are authoriz'd, to make the firſt Aſſeſsment by the Act requir'd to be made, ſhall ſeem moſt agreeable to Equity and Juſtice; and *fol.* the 26th, it is Enacted, That no Perſon ſhall be exempted from the *ſaid* Aſſeſsment and Taxes; and, to prevent the ſaid

ſaid Aſſeſsments for the Aid, from being leſſen'd, or abated, the Act, *fol.* 30, expreſsly provides in theſe Words, Provided, That no Clauſe, or Proviſo in this Act, ſhall extend to the leſſening or abatement of the full Sum appointed by this Act to be taxed; but that the ſame be fully aſſeſt in the ſeveral and reſpective Counties, *&c.* aforeſaid, in ſuch Manner and Form, and to ſuch Uſes, as is herein before-mentioned and declared; and I cannot but conceive, if the aforementioned double Taxes granted to the King, over and above the Sum given for the Aid, were to be applied towards raiſing the Sum expreſsly given for the Aid, That Sum ſo given for the Aid, would be much leſſened at his Majeſty's Coſt; and

fol. 44, after the Penalty of double Taxes are laid upon Papiſts, and reputed Papiſts, and Nonjurors, as if it were on Purpoſe to prevent the Miſ-application of thoſe double Taxes, towards the diſcharging and leſſening the Sum given for the Aid, the Act provides in theſe Words; Provided, That if any Perſon, who ſhall be charg'd or aſſeſt, to, or with, a Pound Rate, upon his Manors, Lands, *&c.* ſhall, upon Complaint made to the Commiſſioners, in ſuch Manner, *&c.* as is herein directed, in Caſe of Appeals, make it appear to any two or more of them, That ſuch Aſſeſsment doth exceed the *Equal* Pound Rate that ought to be charged on him in ſuch Caſe, upon every Proof and due Examination thereof,

thereof, the Commiſſioners of the Diviſion, where ſuch Overcharge doth happen, any three or more of them, are impower'd to abate and leſſen the ſaid Aſſeſsments, ſo much as the ſame ſhall exceed the *Equal* Pound Rate, that ought to be charg'd on him; and ſhall cauſe the Money ſo abated, to be re-aſſeſs'd in ſuch Manner, as they, or any three, or more of them, in their Diſcretions and Judgments, ſhall judge moſt equal, juſt and reaſonable, within the whole Diviſion, where ſuch Overcharge, or Overcharges do happen, altho' the Pound Rate of two Shillings in the Pound, be thereby exceeded. By all which Clauſes, I think it cannot be plainer expreſs'd, That the Intent of the Parliament was, That the Sum given for the

Aid,

Aid, ſhould be fully taxed and rais'd, by a ſingle Tax of two Shillings in the Pound upon perſonal Eſtates, Offices, Annuities, not iſſuing out of Lands, *&c.* and by a ſingle, equal and indifferent Pound Rate, upon Manors, Meſſuages, Lands, Tenements, *&c.* without Reſpect of Perſons; and that your Lordſhip's Rent-Charge, iſſuing out of Lands in *Warwickſhire*, and Rent-Service iſſuing out of Lands in the County of *Northumberland*, are ſo ſecure from being liable to the Double, That I am of Opinion, That they cannot legally be aſſeſs'd, diſtinct, and a-part, from the Aſſeſsment upon the Land to the ſingle Tax given to the Aid, they being included in the Aſſeſsment of the Land; and, as for the Lands

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in your own Poſſeſſion, in the Place where you reſide, I conceive your Lands may be taxed ſingly, and your Perſon, in Reſpect of them, towards raiſing the Sum given for the Aid ; but not to the double Tax for that Uſe ; but of that, I ſhall ſay more when I come to treat of the double Taxes.

In order to which, I obſerve, That there are other Sums of Money, over and above the Sum given for the Aid, which are granted to his Majeſty by the Act, as Fines, Pains and Penalties, ſuch as *fol.* the 18th, a Fine not exceeding 40 *l.* to be ſet upon Aſſeſſors, for refuſing to ſerve ; to be forfeited to his Majeſty, as the Act ſaith, to be levied by Diſtreſs and Sale of the Offen-

Offender's Goods and Chattels, in like Manner, as by the Act is appointed, for levying the ſeveral Rates and Aſſeſsments in the Act mentioned, in Caſe of Refuſal, or Neglect of Payment; and to be charged upon the reſpective Receivers General, *Together* with the ſaid Rates and Aſſeſsments; and ſuch as *fol.* the 23d, a Fine not exceeding 40 *l.* to be ſet upon Aſſeſſors and Collectors, for neglecting their Duty; and granted to his Majeſty, to be levied as the Acts ſaith, by Warrant under the Hands and Seals of the ſaid Commiſſioners, or any two of them, by Diſtreſs and Sale of the Goods and Chattels of the Offenders: and the Act there ſaith, all Fines to be impoſed by the Act, ſhall be paid

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to the Receivers-General, and by them, into the Receipt of his Majeſties Exchequer, and ſhall be inſerted in the Duplicates, to be tranſmitted to the Office of the King's Remembrancer, as aforeſaid, That the ſame may be thereby known and charged on his Account; and ſuch, as *fol.* the 25th, a Fine not exceeding 20 *l.* to be ſet upon Commiſſioners concern'd; and not withdrawing when Matters are debated, wherein they are concerned, to be levied and paid as other Fines to be impoſed, by Virtue of this Act, are to be levied and paid, ſaith the Act; and ſuch as *fol.* the 36th, the Fine of 5 *l.* granted to his Majeſty, to be ſet upon Houſekeepers, for refuſing to give an Account of their Lodgers,

to be levied and recover'd in ſuch Manner, as any other Penalty in the Act mention'd, ſhall and may be levied and recover'd, ſaith the Act; and ſuch as *fol.* the 37th, the Penalty of double Taxes to be yielded to his Majeſty, to be aſſeſs'd, levied, collected, anſwer'd and paid, in ſuch Manner, by ſuch Ways and Means, and according to ſuch Rules and Directions, and under ſuch Penalties and Forfeitures, as are before in this Act expreſſed or appointed, for and concerning the abovemention'd Rates and Sums, ſaith the Act, but 'tis not ſaid for the ſame Uſe; and if it had been ſo intended, I conceive all thoſe latter Words would have been needleſs, the Money to be raiſed towards the Aid, being be-

fore fully directed how to be levied, collected and paid; and the Words (in the ſame Manner) muſt mean in the ſame Manner as the other Perſonal Rates towards the Aid and Penalties are to be levied; for, the double Taxes, cannot be levied upon the Land, and therefore the Words Rates and Sums are added: And I cannot ſuppoſe an *Engliſh* Parliament would tax any Thing in vain; but what follows, more plainly ſhews what their Intention was, in Reference to the Penalty of double Taxes; for the Act, *fol.* 51. reciting, That ſeveral Places had been diſcharged of certain over-plus Sums, by Reaſon of double Taxes, declares double Taxes to be Over-plus Sums in the following Words, *viz.* and the like Overplus

Sums, are not comprehended in the Proportions by this Act charged upon the Counties, &c. wherein the Places overburthen'd are ſcituate; and *fol.* 49, the Act provides in the following Words, Provided always, That there ſhall be provided and kept in his Majeſties Exchequer, in the Office of the Auditor of Receipt, one Book, or Regiſter, in which all the Money, which ſhall be paid into the Exchequer, for the Pound Rates and Duties hereby granted, ſhall be entred and regiſter'd a-part, and diſtinct from all other Sums paid and payable to his Majeſty; and *fol.* 58, it is Enacted, That the Commiſſioners, who are requir'd to tranſmit into the King's Remembrancer's Office of the Exchequer, the abovemention'd Schedules

dules or Duplicates, ſhall, in every ſuch Duplicate, diſtinguiſh and ſet down the groſs Sum that ſhall be aſſeſs'd, charged and payable, in every Diviſion reſpectively, by Virtue of the Act for double Taxes, ſo that it may be known how much the double Taxes, ariſing by this Act, do or will amount to, in every Diviſion where any ſuch ſhall be.

And what will conduce the better to underſtand fully the Meaning of the Act, will be to conſider, the diſtinct Nature of the different and diſtinct Charges laid by the Act; as well thoſe, which are laid for the aſſeſſing, levying and collecting the Aid given to his Majeſty, for the Aid, as thoſe granted to him, for levying

vying the Pains and Penalties granted by the Act, and the different and diſtinct Perſons upon whom, and different and diſtinct Reſpects, for which they are laid, and more eſpecially what double Taxes are to be paid, and to whom, and for what, and what Perſons are to be charged therewith; and I perſwade myſelf, it will not be denied, That the Tax of two Shillings in the Pound, laid upon Perſonal Eſtates, Offices, *&c.* is a perſonal, ſingle, certain and determinate Tax, and doth not at all affect the Land, nor can be levied upon the Land, or otherwiſe raiſed, than by Diſtreſs and Sale of the Goods and Chattels, or the Commitment of the Owner charged; That the Charge of an equal and indifferent

Pound

Pound Rate upon Lands, &c. is a ſingle Rent, uncertain and indeterminate Rate, and affects the Lands, &c. and may be levied by Diſtreſs upon the Land, and is alſo a Perſonal Charge upon the Owner of the Land only, in reſpect of the Land, and for which, ſuch Owner's Goods and Chattels may be diſtrain'd, or that Owner's Perſon be committed; That the Fines, Pains and Penalties abovementioned to be granted to his Majeſty, are Perſonal Charges only, and do not at all affect the Land, and can only be levied upon the Goods and Chattels, or by the Commitment of the Offender; and for that Reaſon, the Act, *fol.* the 14th (that Juſtice may be done to every one) enables the Owner of the Land, to de-

deduct a Proportion of the Tax laid upon the Land for the ſingle Tax, when he pays his Rent or annual Payments, charged upon the Land ; and *fol.* 38, expreſsly debars the Owner, whoever he be, who is aſſeſs'd double from making ſuch Deduction, when he pays his Rent in theſe Words, Provided always, and be it Enacted, That when the Owners of any Lands, *&c.* are liable to be doubly charged, as *Papiſts*, or reputed *Papiſts*, by Reaſon of their not having taken the Oaths, according to the true Intent of this Act, in every ſuch Caſe, ſuch Owners *only*, ſhall be charged with and pay the ſaid double Rates ; and here it muſt be granted, That the Word *only* fully diſchargeth the Land of the double

Tax

Tax; and, by Conſequence, the Perſon charg'd only ſingle, in Reſpect of the Land towards the Aid, can never be charg'd with it, in Reſpect of the Land when diſcharg'd, nor can the Perſon that hath not the Land, be charg'd ſingle to the Tax charg'd on the Land; for common Senſe and Reaſon will never ſuffer a Man to be charg'd double, for what he is not before chargeable ſingle.

I will now therefore (to clear all the remaining Doubts, that may ariſe concerning the true Meaning of the Act) endeavour to make it plain, who are the true Owners and Proprietors of the Land, as well by Law and Reaſon, as by the Words, Intent and Meaning of the

Act; the rather, becauſe ſome ſelf-intereſted Commiſſioners and Aſſeſſors, who have had the good Fortune to have nonjuring Neighbours to live amongſt them (to gratify their private Lucre, Pique, or Reſentment, and to eaſe their own Pockets, and make their nonjuring Neighbours pay their Taxes for them) have made a Difficulty to underſtand, who are the true Owners and Proprietors of the Lands, and have been willing to make the Landlords, who receive Rents only out of the Land, to be chargable to the ſingle Pound Rate, charg'd upon the Land towards raiſing the Aid given, That they might make them liable to the double Penalty alſo, without conſidering the Conſequences thereof; but I am perſwaded

ſwaded the Conſideration (of the Confuſion and Delay it would bring to the preſſing Affairs of the Government, and the Loſs it would cauſe to his Majeſty, and the Impoſſibility it would have occaſion'd of knowing how equally to have rated their juring Neighbours, towards raiſing of the reſt, if Commiſſioners and Aſſeſſors had been authorized, firſt to inquire what Rents, or other annual Payments, had been iſſuing out of the Lands, and to apply the double Penalty for them towards raiſing of the Aid) were Ingredients that entred into the Judgment of the Parliament that made the Act, who conſider'd the publick Good only, and will be the Ingredients of the diſintereſted Judgments of the Learned

Judges, whenever this Matter is brought before them ; they know that no Man that departeth with his Land, can, in Law or Reaſon, be Owners of the Land ; and that the uſual Way, before the Statute of Uſes, for Men to convey the Freehold of Lands from one to another, was by Livery of Seiſin, that is, by Delivery of the Poſſeſſion of the Land, to the Purchaſer of the Lands ; ſo that the Perſon, to whom the Poſſeſſion of the Land was deliver'd, altho' but for the Term of a Life, that Tenant, during that Term, was as much the Owner of the Land, as the Purchaſer of an Horſe is, by the Delivery of him to the Buyer; and Leaſes for Years, altho' but executory Contracts, make the Tenants ſo compleat

pleat Owners of the Lands, after they are executed by the Tenants Entry on the Land, that he is capable of receiving a Releaſe of all Right from others; they know that the Word *demittere* ſignifieth to depart with; and, That every Demiſe of Land to Tenants for Years, or at Will, make him ſo effectually the Owner of the Land, that he only, can bring Actions of Treſpaſs for Treſpaſſes committed upon the Land; and ſuch Actions have been brought and juſtify'd againſt Landlords themſelves, for treſpaſſing upon the Land; for, during the Term, he hath a Rent or other Service from his Tenant, and hath Nothing to do with the Land, nor any Right unto it: They know, that no Man can have Rent

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out of Land, and the Land at the ſame Time; and, That aſſoon as a Landlord becomes Owner of the Land, his Rent is ſuſpended, or extinguiſh'd; they know alſo, That if the Tenant for Years, be turned out of Poſſeſſion by a Diſſeiſor, the Intereſts of all the Landlords, mediate and immediate, under whom the Tenant claimeth, are diſplac'd and turn'd to Rights and that Diſſeiſor, during his Poſſeſſion, is only ratable to the ſingle Tax, as Owner of the Land; and, That there is no Colour of Authority given to Commiſſioners or Aſſeſſors, by the Act, to inquire by what Right, ſuch Diſſeiſor holds the Land; they know, That every Grant of Lands, upon which any Service is reſerved, creates a Tenure; and, That all the Lands

Lands in *England*, are held mediately, or immediately, of the King, He is the Supreme, and Landlord Paramount; and yet the Property thereof, is in the Subject. No Man is capable of a Releaſe of Right, but he that is Owner, and in actual Poſſeſſion of the Land. A Releaſe of Right to a Man, not in Poſſeſſion of the Land, is void; for if a Man make a Leaſe for a Year at common Law, releaſe to him, before it is executed by the Tenant's actual Entry is void; but after his Entry, ſo that he becomes Owner of the Land, it is good; and I may well compare this Caſe to that of Uſes. The Statute of *Richard* II. *chap.* 9. recites, That many Miſchiefs happened by Reaſon of Conveyances to Uſes, and amongſt others, that it

it delayed thoſe that right had, And, by their not knowing againſt whom to bring their Action; for Remedy of which, that Statute enables the bringing of Actions againſt the Pernor of the Profits; and the Statute of 27 *Hen.* VIII. ſoon after, ſo incorporated the Uſe and the Land together, That the then Lord Chief Baron, and Mr. Juſtice *Walmeſly*, in *Chudleigh*'s Caſe, *Co. lib.* 1. *fol.* 132. ſaid, Before that Statute, the Truſtee was Owner of the Land (there being no Tenure between him and *ceſtuy que Uſe*) but ſince that Statute, the *ceſtuy que Uſes* was Owner of the Land; and indeed, the Settlements now uſually made, ſhew the ſame; for although the Feoffee to Uſes, in

Caſe

Caſe a Uſe to that Purpoſe be to him limited, may enter and get the Lands into his Poſſeſſion, to ſupport contingent Uſes ; yet the Property and Ownerſhip of the Land, was in the preſent *ceſtuy que Uſe*. The Application of this to the preſent Caſe, I think, is plain; for as the Act in King *Richard* the Second's Time, to prevent Delays in bringing of Actions, ſubjected the Pernor of the Profits, to the Action of thoſe who right had ; ſo this Act foreſeeing the great Delay and Miſchiefs that might happen, if Commiſſioners, or Aſſeſſors, were to ſpend their Time in inquiring who had Rents, or other annual Payments, iſſuing out of the Lands, to prevent that, ſubjected the Perſon, who had the Land in Poſſeſſion,

or Pernor of the Profits, as Owner thereof to the Payment of the ſingle Pound Rate charged upon the Lands, and left him and Landlords mediate and immediate, to diſtribute and apportion it by Way of Deduction, when they paid their Rents. All which, I think fully appears from the Words of the Act; for, *fol.* 13, hath theſe Words, The Manors, Meſſuages, Lands, Tenements, *&c.* And the Perſons *Having* or *Holding* the ſame, ſhall be charged, *&c.* And becauſe the Terms *Tenant* and *Owner*, are not Terms convertible, for altho' every Owner is a Tenant, yet every Tenant is not Owner, therefore the Parliament, that it might be fully underſtood, That they intended to charge the Tenant in Poſſeſſion, in Reſpect

Reſpect of the Land, which the Tax upon Land, as well as the Land, expreſs him by the Words of the Perſon, that hath, or holds the Land; and, by the Clauſe, *ſo.* 22. they expreſs him by the Words, the Tenants ſo rated; and, that no Room ſhould be left to miſtake their Meaning, they expreſsly name him Owner and Proprietor of the Land, by theſe Words, *viz.* Becauſe the Lands may be liable to *Rent-Service*, *&c.* reſerv'd thereupon, by *Reaſon* whereof the true Owners and Proprietors thereof, do not in Truth, receive to their own Uſe, the true yearly Value of the ſame; for which, nevertheleſs, they be chargable with a Pound *Rate*; it therefore ſhall be lawful, for Landlords,

Owners, and Proprietors of ſuch Lands, being charged with a Pound Rate as aforeſaid, to abate and deduct, &c. from which Words, Landlords, Owners and Proprietors being join'd together, ſome ſelf-intereſted Men, for their own Advantage, would have it inferr'd, That Landlords, Owners and Proprietors, were intended, by the Act, to be one and the ſame Perſons; but ſince there might be Tenant in Fee, Tenant in Tail, Tenant for Life, Tenant for Years, and Tenant at Will, of one and the ſame Land, at one and the ſame Time, all which Tenants, ſave only the Tenant at Will, were Landlords, and liable to pay ſeveral diſtinct and different Rents, as well as Tenant at Will, and if the Act had enabled Owners only

only to deduct in Proportion to the Rents they paid, the Landlords could not have deducted by that Clauſe, in Proportion to what Rents they paid; and therefore to enable them to do the like, they were then coupled with Owners and Proprietors; but afterwards, to make a Diſtinction between them, the Act in the aforeſaid Clauſe, *fol.* 22. Enacts in theſe Words, *viz.* and the ſeveral reſpective Tenant and Tenants of all Houſes, Lands, *&c.* which ſhall be rated by Virtue of this Act, are hereby required to pay, *&c.* ſuch Sum, and Sums of Money, as ſhall be rated upon ſuch Houſes, Lands, *&c* and to deduct out of the Rent, ſo much of the ſaid Rates, as in Reſpect of the ſaid Rents, the Landlord ſhould, or ought

ought to pay or bear; and the Landlords, mediate and immediate, according to their reſpective Intereſts, are requir'd to allow ſuch Deduction and Payments, upon Receipt of the Reſidue of their Rents; and having thus fully diſtinguiſh'd the Landlords from the Tenants in Poſſeſſion, and declar'd thoſe Tenants to be the true Owners and Proprietors of the Lands, *&c.* and chargable with the Pound Rate, the Act, *fol.* 38, Enacts in theſe Words, Provided, That where the Owners of Lands, *&c.* are liable to be doubly charged, as Papiſts, by Reaſon of their not having taken the Oaths according to the trúe Intent of this Act; in every ſuch Caſe, ſuch *Owners only* ſhall be charged with, and pay the ſaid double

double Rates, which Word (*Only*) fully diſchargeth the Lands as I have before obſerv'd of the double Tax, and the following Words, *viz.* and the reſpective Tenants of ſuch Lands, *&c.* are hereby diſcharged of and from the ſame, and as fully diſchargeth the reſpective Landlords, mediate and immediate; for they in Truth, are Tenants according to their reſpective Intereſts, although not in Poſſeſſion of the Lands, *&c.* for, by other Expoſition of that Clauſe, you make it and the Act, contradict themſelves; for further Demonſtration of which, I propoſe this Caſe, *A.* being ſeiz'd in Fee, grants a Rent Charge of 50 *l. per Annum*, to *B.* and then lets his Land for a long Term of Years to *C.* at the yearly Rent

Rent of 60 *l.* who lets the Land to *D.* for a leſſer Term, at the Rent of 70 *l.* who lets it for part of the Term to *E.* for the Rent of 90 *l. per Annum*, who lets it to *F.* for a Year, or at Will, for 100 *l. per Annum*, the full Value; here is Rents and Rent Charge, to the amount of 420 *l. per Annum*, iſſuing out of one and the ſame Land, ſhall 320 *l.* part of it, which conſiſts of Rents, be rated diſtinct and a-part from the Land, to the ſingle Pound Rate? Surely No: And then as ſurely, they ſhall not be rated double; but if F the Tenant in Poſſeſſion, is to be rated for the full Value of the Land, and deduct it when he pays his Rent to *E.* and *E* ſhall deduct in Proportion, when he pays his Rent to *D*,

and

and ſo of the reſt; and by this Means, the full Intent of the Act is fulfill'd, and Juſtice done to every Body concerned.

And, to ſedate your Lordſhip's Apprehenſion, That Commiſſioners and Aſſeſſors, are inveſted with ſuch an arbitrary and deſpotick an Authority, that they may act according to their Will and Pleaſure, your Fears will ceaſe, when you conſider the Clauſes of the Act following; by the Clauſe *fol.* 16. the Commiſſioners are required to cauſe the ſeveral Proportions ſet upon every Diviſion towards raiſing of the Aid, to be equally aſſeſs'd, according to the beſt of their Judgments and Diſcretions; and, *fol.* 17. are to appoint two of the moſt able and

ſufficient Inhabitants thereof to be Aſſeſſors; and *fol.* 23. Power is given to any three of them, to relieve Perſons complaining of Over-Rates, and to re-aſſeſs, in Caſe of Deficiency, as ſhall ſeem to them moſt agreeable to Equity and Juſtice; and all Powers and Authorities by Law, are to be purſued ſtrictly; ſo that there is no Colour of Law given to Aſſeſſors or Commiſſioners, to hunt after Perſons, that are not Perſons who have Lands in their Poſſeſſion, or to inquire what Intereſts or Profits they have or receive out of the Lands, or to ſend for Perſons, Deeds or Writings, in order thereunto; but they are bound to have Recourſe to the Occupyer of the Land, and to charge him in Reſpect of the Land

Land, with the full yearly Value thereof, that the Aid given, may be ſpeedily, fully and effectually rais'd; and the Commiſſioners can adminiſter no Oath, but ſuch as this Act enables them to adminiſter; and *fol.* 31. the Act allows, That Actions and Informations, may be brought againſt Commiſſioners, and others, who exceed or abuſe their Authority, upon the Penalty of treble Coſts, if they proceed with Effect; from all which it appears, the Commiſſioners and Aſſeſſors, are not ſo arbitrary, as your Lordſhip imagined; but are bound to keep within the Limits of Equity and Juſtice. It is true, there is Power given, *fol.* 22. to the Commiſſioners, to ſettle Differences concerning the Rates between Land-

lord and Tenant, as they ſhall think fit; but that can mean only ſuch Differences, as concern the Quantity of the Proportions of the ſingle Tax, given towards raiſing of the Aid which Landlords were to allow to the Tenant charg'd, when he received his Rent; and even in that Caſe, did not require them ſo to do, but left it to their Option, whether they would or not; and, *fol.* 25. it is Enacted, That all Queſtions ariſing, touching the Aſſeſſments, ſhall be heard and finally determin'd by the Commiſſioners in ſuch Manner, as by the Act is directed (not according to their Will and Humour) upon Complaint to them made by the Perſons aggriev'd, without further Trouble or Suit in Law; but that Clauſe

is plainly directory, and binds them to the Directions of the Act, that there might be no further Trouble or Suits in Law ; for your Lordſhip muſt not ſuppoſe, from any of the Words contained in the Act, that Commiſſioners are inveſted with ſuch an abſolute and unlimited, tyrannical Power, That they may do whatever Lucre, Will, Malice, Pleaſure or Humour, may ſuggeſt unto them, without Contradiction of his Majeſty, or his Judges in the ſuperior Courts in *Weſtminſter Hall* ; that would be to ſet upon an independant Authority within the Nation, that might comptrol the Laws of the Kingdom. I readily agree, That for ſmall Faults, Overſights and Errors in Opinion, of the Commiſſioners

ſioners, that are not wilful and malicious Judges, will, and I humbly conceive, ought to indulge and favour Commiſſioners, becauſe they are ſuppoſed to act for the Good of the Publick, and for that End, are entruſted with thoſe Authorities, and *de Minimis non curat Lex:* But for thoſe, that break that Truſt, and deviate from the Dictates of common Equity and Juſtice, and are actuated only by Paſſion, Humour and Pleaſure, and not by the Meaning and Directions of the Act, ſuch as taxing Perſons towards raiſing the Sum given for the Aid, for what they ought not to be taxed; charging others, with the Penalty of double Taxes, who ought not to be charged therewith; ſetting Fines,

Pains,

Pains and Penalties, upon Perſons that are not liable thereto ; and for ſuch as refuſe Relief for immoderate Overcharges upon Perſons, after due Complaint and Appeal made unto them, and ſuch as wrong his Majeſty of the double Taxes, by miſapplying them towards the Aid, and thereby leſſen and abate the Aid given ; and for ſuch, who charge thoſe, who offer to take the Oaths, with double Taxes ; and, in a Word, ſuch as apparently exceed the Bounds of Equity and Juſtice, and the true Meaning of the Act ; I ſay, for thoſe, if Recourſe were not to be allowed to his Majeſties Juſtice, the Liberty of the Subjects of *England* would be precarious, and People would be

be in a very miſerable and ſlaviſh Condition.

And now, my Lord, I will conſider that Part of the Caſe which relates to your Son, who, You ſay, was, at the Time of the Execution of the Act, and ſtill is beyond the Seas; and therein I ſhall have Occaſion to diſcourſe more largely of the double Taxes. Every Word of an Act of Parliament ought to be conſider'd to come at the true Meaning of it. It is allow'd in Deeds and Acts of Parliament, for the Supportation of Juſtice, to tranſpoſe Words and Sentences, as it was in the Caſe of *Gilmor* and *Shuter*, in *Thomas Jones*'s Report, *fol.* 109. where, in the Satute againſt Frauds and Perjuries,

juries, the Words were; No Action ſhall be brought after the 24th of *June*, upon any Promiſe, without Writing; and it was adjudg'd, That thoſe Words ſhould be tranſpoſed thus; No Action ſhall be brought upon any Promiſe, after the 24th of *June*; and, for the better Underſtanding this Act, it will be neceſſary to tranſpoſe the three Clauſes, *fol.* 37, and 38. concerning the double Taxes, and conſider the laſt; firſt, The Words of which are; Any two, or more of the Commiſſioners, *&c.* upon Information, or any Cauſe of Suſpicion, in that Behalf, ſhall, and are hereby required to ſummon *every* Perſon (which general Word includes Perſons of all Denominations) ſuſpected, to be ſummoned

to appear to take the Oaths; and to this Clauſe muſt neceſſarily be added this tacit Condition; Provided his Perſon be chargeable for the ſingle Tax; without it, a Door would be opened to let in Oppreſſion and Vexation upon Proteſtant juring Subjects, as well as peaceable Catholicks, whether his Perſon be chargeable or not, if Commiſſioners, upon any pretended Imagination or Suſpicion, might ſummon their fellow Subjects, againſt whom they had any Pique or Diſguſt, from one Part of the Kingdom to the other, how diſtant ſoever; which, juſt Law-makers could never intend; and had the Act reſted at this Clauſe, all Perſons chargeable wherever they were, muſt have been ſummoned; but to

reſtrain

reſtrain the Generality of that Clauſe, in the firſt Clauſe, the Commiſſioners are reſtrain'd to Nonjurors in *England*; for Papiſts, and reputed Papiſts, are not charg'd with the double Tax as ſuch, but as Nonjurors; for *fol.* 38. it is ſaid, where Owners of Lands, *&c.* are liable to be charg'd doubly as Papiſts, or reputed Papiſts, by Reaſon of their not having taken the Oaths, according to the Meaning of this Act, *&c.* and it is very well known, many notoriouſly reputed Papiſts, who have taken the Oaths, live as free from Trouble from this Act, or any other penal Law againſt Papiſts, as the faithfulleſt Subjects in the Nation do; and, I am of Opinion, there can be no legal Evidence now given in a Na-

tion, allowing Liberty of Conſcience in Religion as *England* doth, to prove a Man a Papiſt, but refuſing to take the Oaths. I do not remember to have met with the Word Catholick, in any Act of Parliament made againſt Papiſts; and the honeſt and learned Lord Chief Juſtice *Vaughan*, in his Reports, *fol.* 109 ſaith, if Uſuage hath been againſt the obvious Meaning of an Act of Parliament, by the vulgar and common Acceptation of the Word, then it is rather an Oppreſſion of thoſe concern'd, than an Expoſition of the Act, eſpecially as the Uſuage may be circumſtanced. But to conſider the Words of that Clauſe more exactly, the Words are; Every Papiſt, or reputed Papiſt in *England* (by which Words all

all Papiſts, and reputed Papiſts, not in *England*, are excuſed from being ſummoned, or charged with the double Tax) being of the Age of 18 Years or upwards (by which Words all Papiſts, or reputed Papiſts, under that Age, are likewiſe excuſed) not having before taken the Oaths (by which Words all Papiſts, or reputed Papiſts, that had taken the Oaths, are alſo excuſed) ſhall yield, and pay unto his Majeſty (it is not ſaid towards raiſing the ſum given for the Aid) double the Sums and Rates, *&c.* which he, or ſhe, ſhould, or ought to pay, or be charged with, (it is not ſaid which he, or ſhe, ſhould, or ought to allow, to be deducted, when they receive their Rents) and there is a great deal of Difference between

tween charging Landlords Rents in the Hands of Tenants, who receive the yearly Profits, and are charged with the Value of the Land, out of which, the Rent iſſueth, with Power to deduct, as I have already ſhewn, is the Meaning of the Act, and, between charging Tenants Lands in the Landlords Hand, which may be of a greater yearly Value than the Rent, and for the Overplus of which, the Landlord cannot poſſibly deduct, becauſe he pays no Rent to his Tenant, and, to alter and change the Words, which he or ſhe ſhould, or ought to pay, or be charged with, to the the Words which he or ſhe ſhould, or ought to allow to be deducted, when they receive their Rent, is ſuch a Stretch of a Penal Law,

as

as, I'll be bold to ſay, was never yet ſuffer'd in *Weſtminſter Hall*; and, I believe, never will; and the intervening Clauſes, between the two Clauſes I have already ſpoke to, fully explains the Meaning of both theſe Clauſes to be, That no Perſon ſhall be charged double, but thoſe who are in *England*, and, being ſummoned, refuſe to take the Oaths, or appear: The Words are, Every Perſon being of the Age of eighteen Years, or upwards, being in *England*, *&c.* at the Time of the Execution of this Act, who ſhall not, before that Time, have taken the Oaths, *&c.* and upon Summons, *&c.* ſhall refuſe to take the Oaths, or appear, ſhall yield, *&c.* and the Clauſe following that, which relates to that, which concerns

cerns Papiſts, is in theſe Words; Provided, if any *ſuch* Papiſt, *&c.* within ten Days after the firſt Meeting of the Commiſſioners, ſhall take the Oaths in that Caſe, he, or ſhe, ſhall not be liable to be doubly aſſeſs'd; which Word *ſuch*, being a Relative, ſo tacks it to the precedent Clauſe, that if it be underſtood, That Papiſts, *&c.* ſummoned and charged double by that Clauſe, ſhall only have the Benefit of it, by taking the Oaths, within ten Days after the firſt Meeting of the Commiſſioners, and that Nonjurors are excluded, it was more partial, and in Favour of Papiſts, *&c.* than of ſuch Proteſtants, by giving them an Opportunity, when doubly charged in former Years, or (when ſummoned) to

to diſcharge themſelves, which, ſurely the Act never intended; from all which, I conceive your Lordſhip's Son ought not to have been charged with the double Tax.

And, in Favour of Parochial Parſons, and other dignified Eccleſiaſticks, Gentlemen not concerned in Trade, and Farmers, I ſhall add, That as I am of Opinion they cannot be comprehended in the Laws made againſt Bankrupts, ſo they ought not to be charged for ready Money, Debts, or other perſonal Eſtate, towards raiſing the Sum given for the Aid; for, by the Act, Stock upon Land, and ſuch Goods as are uſed for Houſhould Stuff, are expreſsly excepted; and that is all the perſonal Eſtate ſuch Perſons

can be ſuppoſed to have, and the Perſons charged, ſeem, to me, to be only trading Perſons ; for it is Perſons having Eſtates in ready Money, Debts, &c. which being joined to Wares, Merchandizes, &c. ſeems to mean only thoſe, who, by Reaſon of Commerce, have the Opportunity of encreaſing their ready Money, &c. and not to thoſe, whoſe ready Money is the Iſſues of their Rents, and the Superfluity of their Income, which their neceſſary Expences ſpared them, which would lie dead and uſeleſs to the Nation, unleſs they accommodated Trade, the Darling of the Parliament, by lending it to Tradeſmen or Gentlemen, to ſupply their Occaſions with, and for which, ſome Divines ſay, no Uſe by the Law of God,

can

can be receiv'd; and, I am perſwaded, no Man will think it reaſonable, That if ſuch Perſons as Parochial Parſons, or other dignified Eccleſiaſticks, Gentlemen, or Farmers, ſhould ſell their Tithe, Corn, Stock upon Land, or Houſhold Stuff, for ready Money or Truſt, ſuch ready Money, or Debts, ſhould be taxed towards raiſing of the Aid. Since the 11 *Henry* IV. *fol.* 46. it was adjudg'd, That when a Man's Tenants are taxed to a Fifteenth, the Landlord ought not be taxed for his Rents; and, *Co. li.* 5. *fol.* 67. in *Jeffrey*'s Caſe, it was agreed, That to tax a Man for his Rents, when his Tenants are taxed for their Lands, is againſt Law and Reaſon, and the common Experience of all *Eng-*

land. I confeſs I have known Gentlemen and Eccleſiaſticks taxed for ready Money to a Poll Tax, where Lands are never taxed ; but I never heard that any Eccleſiaſtick or Gentleman, not concerned in Trade, were ever taxed for ready Money or Debts, to a Land Tax.

The Amount of what I have ſaid, is, That the Sum given towards the Aid, is to be raiſed by an equal and indifferent ſingle Tax ; That Tenants in Poſſeſſion of the Lands, and not Perſons claiming Rents only out of Lands, are to be charged to the ſingle Tax, with Power to deduct, *&c.* That double Taxes are Penalties over and above the Pound Rate, which, conſidering the

the Danger that might happen to the Publick in Times of Trouble, if Lands were ſuffer'd to be in the Hands of ſuſpected Perſons, the Parliament thought fit to lay upon ſuch ſuſpected Perſons, who ſhould not let their their Lands to juring Proteſtant Tenants: From all which, I conclude, the Act is as reaſonable, juſt and equitable an Act, as ever was made; and, I am confident no honeſt Man will take Offence at what I have writ, ſince it tends only to the explaining the true and equitable Meaning of the Act, and vindicating his Majeſty and the Parliament from thoſe Aſpertions, ſome ſelf-intereſted Perſons have, by their Miſconſtruction of ſome Clauſes of the Act, endeavoured to throw

upon

upon them, by rendring their Laws odious and unſupportable to their peaceable Catholick Fellow Subjects; all which I humbly ſubmit to the Reverend and Learned Judges and Sages of the Law, whenever the Matter ſhall be fairly brought before them; for I hereby declare, I am a very ſubmiſſive and obedient Subject to King *George*, and

Your Lordſhip's moſt obliged,

and moſt Humble Servant,

BRITISH MUSEUM 13 JU 93

L. M.